

MEMORANDUM OF LAW

DATE: March 28, 1988

TO: City Clerk

FROM: City Attorney

SUBJECT: Designation of Candidate's Occupation
(San Diego Municipal Code Section 27.2201)

This is in reply to your memorandum of March 21, 1988, concerning the proposed statement of candidate's occupation submitted by Floyd Morrow, candidate for Mayor. Mr. Morrow requests the following designations, "Experienced: Attorney, Councilmember, Businessman."

You query first whether Mr. Morrow may use the term "Councilmember" since that is his former, not current, occupation. You next query whether he may use the term "experienced" since that appears contrary to San Diego Municipal Code ("SDMC") Section 27.2201.

SDMC Section 27.2201 reads in relevant part:

A candidate who is running for the same elective office which he then holds shall have printed on the ballot, immediately underneath his name, at his option, the word "Incumbent" or not more than four words designating such elective office, or any other words not exceeding four in number designating the principal profession, vocation or occupation of the candidate.

Candidates for office other than the incumbent may have printed on the ballot in like manner words, not exceeding four in number, designating the principal profession, vocation or occupation of the candidate. The City Clerk shall not permit a designation which would suggest an evaluation of a candidate, such as "outstanding," "leading,"

"expert," "virtuous," or "eminent." At the time a candidate files his Statement and Affidavit of Nominee, if he desires that his principal profession, vocation or occupation be designated on the ballot, he shall also file with the City Clerk a statement indicating his principal profession, vocation

or occupation in not more than four words. Such statement shall be filed on a form provided by the City Clerk and shall contain a declaration by the candidate of the truth thereof. The statement shall be signed under penalty of perjury. The City Clerk shall not be required to verify a candidate's designated profession, vocation or occupation. No candidate shall assume a designation which would mislead the voters. . . .

The language cited above answers both questions. First, although the City Clerk has no duty to verify a candidate's "principal profession, vocation or occupation" under this Code section, the Clerk may take notice of the fact that Mr. Morrow is not presently sitting on the City Council and is, therefore, not currently a Councilmember. Only a candidate who is running for the same elective office which he then holds may use the word "incumbent" or equivalent to indicate his current vocation as a Councilmember. By implication, persons other than current Councilmembers may not do so. Furthermore, this Code provision prohibits candidates from assuming a designation that is misleading. In our opinion, Mr. Morrow's use of the term "Councilmember" without a qualifier such as "ex" or "former"¹ would be misleading and, therefore, violative of the Code. The fact that only a current Councilmember, and not other persons, could list that term as his current vocation or profession was made clear to the same Mr. Floyd Morrow by this office in a memorandum addressed to him in 1971 when Mr. Morrow was then on the Council (copy attached).

¹ The use of the term "former" or "ex" is specifically prohibited by state law Elections Code 10211(b)(4), but is allowed under the Municipal Code. The San Diego City Council apparently considered and decided not to adopt a similar position in 1979. See Report To The Honorable Mayor and City Council by City Attorney, dated March 6, 1979 (copy attached).

In the second instance, we find the term "experienced" to be in the nature of an evaluative term such as those described in the body of the Code provision and, therefore, prohibited. This opinion is in accord with prior opinions issued by this office on July 27, 1979, June 26, 1975 (2), August 27, 1973 and July 27, 1973, copies of which are attached.

In conclusion, we recommend that you do not accept the designation as written because of the two terms "Experienced" and "Councilmember."

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:fs:930.62(x043.2)

Attachments

ML-88-34